Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Limitations on Commercial Time on Television Broadcast Stations	MM Docket No. 93-254

To: The Commission

COMMENTS OF VALUEVISION INTERNATIONAL, INC.

ValueVision International, Inc. ("ValueVision") respectfully submits the following comments in connection with the Commission's Notice of Inquiry ("NOI") in the above-captioned proceeding.

ValueVision is a television home shopping network that began operation in October 1991. ValueVision programming is currently broadcast on a part time basis by several UHF independent stations.[1/] These broadcasts provide an important source of competition to cable home shopping program services.[2/] ValueVision has recently negotiated agreements to purchase four UHF television stations, and hopes to acquire others, on which it

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1/ ValueVision programming is also carried by cable operators on cable channels in some areas, as well as by LPTV stations and to home satellite dish owners.

2/ As the Commission found in the home shopping must-carry proceeding, "the existence and carriage of home shopping broadcast stations play an important role in providing competition for nonbroadcast services supplying similar programming." Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, 8 FCC Rcd 5321, 5326 (1993) ("Home Shopping Must-Carry Order").

intends to broadcast its home shopping programming for at least some portion of the broadcast day. ValueVision would thus be directly and substantially affected by the proposals made in this proceeding.

In its NOI (¶ 7), the Commission has sought comment on whether an excess of commercial programming disserves the public interest. ValueVision believes that the most effective means to define what level of commercialism is "excess" is by reference to what the public in the highly competitive video marketplace will accept. As the Commission found in 1984, "marketplace forces can better determine appropriate commercial levels than our own rules."[3/] In particular, the Commission has found with respect to home shopping programming that "marketplace forces are applicable," and that "[t]he format will not be sustained if the sales generated do not support the operation of the television station." Family Media, Inc., 2 FCC Rcd 2540, 2542 (1987), aff'd sub nom. United Church of Christ v. FCC, 911 F.2d 803 (1990).

The NOI notes that the public interest requires that the Commission periodically reassess that term in light of changing circumstances. But here the rationale applies with even more force today than it did in 1984. As a result of the vast increase in media outlets available to the viewing public over

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[3/] Report and Order, 98 F.C.C.2d 1076, 1102 (1985) ("Deregulation Order"), recon. denied, 104 F.C.C.2d 358 (1986), aff'd in part and remanded in part sub nom Action for Children's Television v. FCC, 821 F.2d 741 (D.C. Cir. 1987).

the past two decades,[4] and the stiff competition from cable programming and other media faced by broadcast television,[5] "the Commission's interest in preventing over-commercialization is far different today than [the Commission] may have considered necessary in the past."[6]

Any attempt to compare the public interest value of traditional entertainment versus home shopping programming would in any event raise significant First Amendment concerns. See NOI at ¶ 8. To regulate commercial speech, the government must establish (1) that the its asserted interest is substantial; (2) that the regulation at issue directly advances that interest; and (3) that the regulation is a reasonable means to achieve the government's objective (i.e., its scope is in proportion to the interest served). Any such restriction must be justified "without reference to the content of the speech." Cincinnati v. Discovery Network, Inc., 113 S. Ct. 1505, 1510-16 (1993) (quoting Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989)). In Cincinnati, the Court reaffirmed its view that "'commercial speech serves to inform the public of the availability, nature, and prices of products and services, and thus performs an

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[4] See Review of the Commission's Regulations Governing Television Broadcasting, 7 FCC Rcd 4111, 4112 (1992).

[5] See Evaluation of the Syndication and Financial Interest Rules, 8 FCC Rcd 3282, 3304 (1993) (noting competition to broadcast television from other media).

[6] Home Shopping Must-Carry Order, 8 FCC Rcd at 5335 (1993) (Separate Statement of Chairman Quello).

indispensable role in the allocation of resources in a free enterprise system. . . . [S]uch speech [thereby] serves individual and societal interests in assuring informed and reliable decisionmaking."' Indeed, the Court concluded that the "'listener's interest in [commercial speech] is substantial; . . . [and] often may be far keener than his concern for urgent political dialogue."' 113 S. Ct. at 1512 n.17 (quoting Bates v. State Bar of Arizona, 433 U.S. 350 (1977)).

The NOI advances no government interest that would be served by the application of limits to home shopping programs, other than the content-based goal of restricting the amount of commercial speech by television stations and networks.[7/] As noted above, even this goal is well met by viewer preferences. More important, however, limiting the broadcast of home shopping programming would deprive viewers of the substantial benefits identified both by the Supreme Court in Cincinnati, and by then-Chairman Quello in the recent home shopping must carry order[8/]:

1. Consumer Benefits. As the Commission found in the home shopping must-carry proceeding, "home shopping stations have significant viewership" and "the format's continued success and

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7/ In an earlier era, the Commission expressed concerns about "the frequency with which regular programs are interrupted for advertising messages." Commission Policy on Programming, 20 R.R. 1901, 1913 (1960). This concern, of course, has no application to home shopping programming.

8/ See Home Shopping Must-Carry Order, 8 FCC Rcd at 5335-36 (Separate Statement of Chairman Quello).

expansion would not likely occur without significant viewer support." Home Shopping Must-Carry, 8 FCC Rcd at 5322. Just as the Sears, Roebuck catalogue once linked people in rural areas to a whole range of products not available in general stores as the country expanded west at the turn of the century,[9] ValueVision's home shopping programming provides similar access for the elderly, the incapacitated, the disabled and those who work in the home or for whom travel is otherwise inconvenient or impossible. Home shopping programming also provides television viewers with detailed information about the quality, availability, and price of products. And like Sears before them,[10] home shopping programmers like ValueVision also provide additional benefits to these customers by generally affording them substantial discounts from the prices offered at retail.[11]

ValueVision also provides access to these competitive and other benefits for those who cannot afford or choose not to subscribe to cable. As then-Chairman Quello noted, "not everyone wants -- or can afford -- cable TV. . . . [T]his is particularly true for those people who benefit most from the availability of home shopping service." Id. at 5336. Although 90% of television households are passed by cable, only some 60% of all television households subscribe to cable. Review of the Commission's

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[9] Gordon L. Weil, Sears, Roebuck, U.S.A. The Great American Catalog Store and How It Grew 9 (1977).

[10] Id. at 9, 15.

[11] See, e.g., Consumer Reports, December 1992, at 803.

Regulations Governing Television Broadcasting, 7 FCC Rcd 4111, 4112 (1992).

2. Market Competition. The television home shopping industry is currently dominated by cable home shopping services, particularly QVC Network, Inc. ("QVC"). In the 1992 Cable Act, Congress expressed its concern over the lack of competition in this industry and directed the Commission to consider the role of home shopping stations in providing competition to non-broadcast home shopping services. See 47 U.S.C. § 534(g). In carrying out this directive, the Commission found that the "public would not be served by diminishing the competition to cable home shopping services," and ruled that home shopping stations were entitled to must-carry status. Home Shopping Must-Carry Order, 8 FCC Rcd at 5326. As a result, home shopping television stations now provide essential competition to QVC, the predominant cable home shopping service,[12/] thereby expanding "the menu of competitive choices

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[12/] These stations currently include both ValueVision and HSN affiliates. Although HSN also provides cable programming services, their potential for providing competition to QVC is currently unresolved. Following QVC's bid to acquire Paramount Communications, QVC and HSN agreed to terminate negotiations on QVC's proposal to merge with HSN. SEC Form 10-Q, filed by Home Shopping Network, Inc., on November 12, 1993. Nevertheless, HSN continues to be controlled by Liberty Media Corporation ("Liberty"). Id. In turn, Liberty is the single largest shareholder of QVC. SEC Form 13D, filed by QVC Network, Inc., November 11, 1993.

Although Liberty has agreed to divest its interest in QVC following, and not to exercise control over QVC pending, consummation of QVC's acquisition of Paramount, Liberty and TCI have agreed, in any event, to continue carrying QVC's programming. SEC Form 13D, filed by QVC Network, Inc., November (continued...)

available to viewers who desire the advantages of home shopping." Id.

3. Revitalizing UHF Television Stations. Home shopping programming further serves the public interest by providing UHF television stations with the financial support necessary to provide news and public affairs programming that better serves the needs of their communities. Just last year the Commission again expressed concern over the steady decline in recent years of the profitability of UHF independent stations. Review of the Commission's Regulations Governing Television Broadcasting, 7 FCC Rcd 4111, 4112 (1992). The Commission found that "[a]lthough most large-market stations, particularly network affiliates, have continued to earn high, though falling, profits, losses apparently have become the norm in much of the rest of the industry." Id.[13/] The Commission noted that UHF stations in particular are "often handicapped by less favorable signal propagation characteristics and higher technical operating costs

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[12/] (...continued) 11, 1993. Thus, regardless of whether QVC succeeds in its bid for Paramount, Liberty and TCI will have an incentive not to carry HSN where they are already carrying QVC -- just as QVC essentially eliminated Cable Value Network after acquiring it in 1989. See Reply Comments of ValueVision International, Inc., filed April 27, 1993 (Docket No. 93-8). Indeed, TCI reportedly carries HSN's programming on only one third of its systems. Communications Daily, December 17, 1993, at 2.

[13/] While independents as a group were marginally profitable in 1989, for the prior three years they experienced steadily increasing losses. F. Setzer and J. Levy, Broadcast Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd 3996, 4025-26 (1991) ("OPP Report").

than VHF stations and tend to be less profitable than their VHF competitors." Id. at 4115. Independents also experience significantly higher programming costs. For example, the cost of programming for independent stations rose from 48.8 percent of total expenses in 1979 to 57.1 percent in 1989. OPP Report at 4030.

Home shopping programming has provided numerous television stations with the funding they need to meet their operating costs -- and in particular to provide innovative informational and educational programming. For example, ValueVision is now providing its programming to WHAI-TV, Bridgeport, CT, which had previously been forced off the air for two years. By receiving revenue from ValueVision rather than paying substantial program license fees to syndicators, WHAI-TV has been able to resume broadcasting and now provides educational programming from regional colleges for several hours each day (including during prime time). Similarly, the licensee of WTWS(TV), New London, CT, has been able to continue providing local news and innovative public affairs programming (which includes live call-in shows about news and sports topics of local interest).

ValueVision has entered into agreements to acquire four UHF stations and is actively negotiating to acquire others. If ValueVision has the flexibility to broadcast its home shopping programming on these stations for a substantial part of the broadcast week, it will avoid significant expenditures for syndicated programming and secure an even more secure revenue stream to finance news and public affairs programming of the kind that will truly serve the problems, needs and interests of local viewers. ValueVision's stations could, for example, offer continuous coverage of state and local government proceedings or community events, as well as a variety of forum programs featuring local leaders. The imposition of commercial limits could seriously impede or prevent altogether ValueVision's ability to broadcast such programming.

CONCLUSION

For the reasons stated above, it would be unnecessary and unwise for the Commission to impose commercial limits on home shopping programs. If it does set such limits, however, they should be flexible enough to permit sufficient home shopping programming to provide the consumer and competitive benefits discussed above and the financial support for the kind of local informational programs many UHF stations are currently unable to provide.

Respectfully submitted,

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